

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

ZACKERY D. BILLINGS,

Defendant.

ORDER
15-cr-50

The Court (Hon. Richard J. Arcara) referred this case to United States Magistrate Judge Jeremiah J. McCarthy for all pre-trial matters, including those that a magistrate judge may hear and determine, pursuant to 28 U.S.C. § 636(b)(1)(A), and those that a magistrate judge may hear and thereafter file a report and recommendation, pursuant to § 636(b)(1)(B). See Text Order of Referral dated Mar. 17, 2015. Judge Arcara since transferred this case to the undersigned. See Docket Item 74.

Defendant Zackery Billings (“the defendant”) is charged, along with four other individuals, with conspiracy to manufacture, to possess with intent to distribute, and to distribute, 500 grams or more of a mixture and substance containing methamphetamine. See Docket Item 1.

On December 8, 2015, the defendant filed a collection of motions under the caption “Defendant Zackery D. Billings’s Pre-trial Motions.”¹ See Docket Item 88. The defendant filed his pre-trial motions more than a month after the October 22, 2015 deadline for filing pre-trial motions – which had been extended twice based on motions

¹ Although this filing was docketed as the defendant’s “First Motion for Leave to File Pretrial Motions,” the caption of the motions accurately describes what the filing actually is: the defendant’s pre-trial motions.

for extensions by the defendant – set in the Second Amended Scheduling Order. See Docket Item 68; see *also* Docket Item 57. After the government filed a response opposing the defendant's untimely pre-trial motion, see Docket Item 92, Magistrate Judge McCarthy issued a Report and Recommendation, dated December 18, 2015, recommending denial of the defendant's pre-trial motion without prejudice to a renewed motion demonstrating good cause. See Docket Item 93. The parties did not file any objections to the Report and Recommendation, and the time to do so now has expired.

A district court may accept, reject, or modify, in whole or in part, the findings or recommendation of a magistrate judge. 28 U.S.C. § 636(b)(1); Fed. R. Crim. P. 59(b)(3). The district court is required to conduct a *de novo* review of those portions of a magistrate judge's recommendation to which objection is made. 28 U.S.C. § 636(b)(1); Fed. R. Crim. P. 59(b)(3). But the statute does not require the district court to review the recommendation of a magistrate judge to which no objections are addressed. See *Thomas v. Arn*, 474 U.S. 140, 149-50 (1985). Moreover, the failure to make a timely objection to a report and recommendation “waives a party’s right to review.” Fed. R. Crim. P. 59(b)(2); see *also United States v. Ballares*, 317 F. App’x 36, 37-38 (2d Cir. 2008) (district court was entitled to rely on Fed. R. Civ. P. 59, which “explicitly extend[ed] the waiver rule to criminal cases”).

Nevertheless, “the district judge retains the authority to review any magistrate judge’s decision or recommendation whether or not objections are timely filed.” Advisory Committee Notes to Fed. R. Crim. P. 59 (2005 Adoption). Accordingly, this Court carefully reviewed Magistrate Judge McCarthy’s Report and Recommendation, as well as the parties’ submissions to Magistrate Judge McCarthy. Based on that review,

and in the absence of any timely objections, this Court accepts and adopts the magistrate judge's recommendation in its entirety. For the reasons stated in the Report and Recommendation (Docket Item 93), the defendant's pre-trial motions are denied without prejudice to a renewed motion demonstrating good cause.

IT IS SO ORDERED.

Dated: February 9, 2016
Buffalo, New York

s/Lawrence J. Vilaro
LAWRENCE J. VILARDO
UNITED STATES DISTRICT JUDGE